

IN THE MATTER OF AMENDMENTS PROPOSED BY THE TRUSTEES OF THE  
BRITISH MUSEUM IN RESPECT OF PLANNING CONSENT 2009/4638/P

ADVICE

1. The Trustees of the British Museum ("the Trustees") secured consent ("the Permission") from the London Borough of Camden ("LBC") on 13<sup>th</sup> January 2010 for the following development:

*'Erection of a 5-storey building (plus 3 basement levels) with roof plant to provide a special exhibition gallery, logistics bay (accessed via new vehicular lift off Montague Place), collection storage facilities, conservation laboratories, associated offices and management facilities for the British Museum (Class D1), associated alterations to the facades of the North Range and King Edward Building, and hard and soft landscaping works (following the demolition of nos. 1 and 2 Montague Place, Book Bindery, EDF sub-station, BMS Store, stonemasons/locksmiths and portacabins).'*

2. The required Listed Building and Conservation Area consents were granted simultaneously.
3. The consents have been substantially implemented, including demolition of the buildings referenced in the description of development and the excavation of the three basement levels. Those pre-commencement conditions required prior to commencement of the three consents have also been discharged by LBC.
4. Inevitably, given the scale of this project, it has been necessary during the detailed design stage of the proposed development to consider several minor amendments to the approved plans.
5. These amendments have been explained to me in a document produced by the scheme architects, Rogers Stirk Harbour and Partners ("RSHP").  
Essentially, these relate to six different matters:
  - i. An additional glazed exit from the Special Exhibitions Gallery;
  - ii. An Additional requirement for a Building Management Unit ("BMU") mounted on the roof of Pavilions 2, 3 and 4;
  - iii. Revised locations and increased height of the flue stacks associated with the fume extract systems in Conservation and Scientific Research;

- iv. Revised setting out by a maximum of 450 mm at one location, but generally by considerably less;
- v. Additional requirements for air exhaust trumpets at Level 00 and 02;
- vi. Modifications (a slight reduction in size) to the Refuse Store Area at Level 1.

6. I am asked by the Trustees to consider whether these should be treated as non-material amendments and therefore be subject to applications to LBC pursuant to section 96A of the Town and Country Planning Act 1990 (as amended) ("the Act"). If not, I am asked to consider what other course should be pursued.

7. Section 96A of the Act was brought into force on 1<sup>st</sup> October 2009. It was introduced in order to allow minor amendments to be made to planning permissions without invoking the full bureaucratic process which a new planning application would trigger (particularly on a large scheme).

8. DCLG issued Guidance in 2009 entitled "Greater Flexibility for Planning Permissions" ("the Guidance") to accompany the coming into force of section 96A and its companion provisions. The Guidance states at para.42:

"There is no statutory definition of 'non-material'. This is because it is so dependent on the context of the overall scheme – what may be non-material in

one context may be material in another. The LPA must be satisfied that the amendment sought is non-material in order to grant an application under s.96A.”

9.

10. Several local planning authorities have nevertheless published guidance on the types of amendment which they would or would not be likely to regard as “non-material”. However these can only be guidance and each case will turn on its own particular facts.

11. I have considered the six potential amendments listed above very carefully and have formed the view that whilst they are all arguably non-material, they fall into two categories.

12. The first category is those amendments where what is proposed is plainly non-material and where no purpose whatsoever would be served by requiring a new planning application to be submitted. This category captures amendments (iv) and (vi) from the above list.

13. The former (iv) relates to very minor adjustments which have been made in setting out. I have examined the approved and proposed amended outlines on

the drawing provided by RSHP and the differences are so minor as to be non-material. In particular, the amendments do not result in the new building being materially closer to any adjoining properties.

14. The latter (vi) relates to a reduction in the size of a refuse store. As what is proposed is a slight reduction in the quantum of development in an inward-looking part of the Museum site, I cannot see how this could sensibly be regarded as material. Insofar as it is suggested that this may have functional implications in terms of waste collection and storage, it is considered that this is a management issue for the Museum, which would plainly want such matters properly controlled in order to discharge its duty of care to its staff and visitors. If LBC seeks yet further reassurance, then Section 96A permits the imposition of further conditions on an application for a non-material amendment: see paragraph 48 of the Guidance. Accordingly, if necessary, a scheme could be required to be submitted to regulate the storage of waste within the Museum.

15. My second category captures those proposed amendments which are arguably non-material, but which in each case involve a minor additional element of operational development, over and above that permitted by the permission. This category thus includes: (i) the additional glazed exit, (ii) the BMUs on the roof, (iii) the extra flue heights and (v) the exhaust trumpets.

16. There is no condition attached to the Permission requiring that it may only be implemented in accordance with the listed, approved drawings and there is no reason, in my opinion, why these small, discreet additional elements of operational development should not be considered on their own merits - just as they would be if the building were complete and it became necessary after a few years to revisit certain minor elements of the design.

17. Amendment (i) the additional glazed link is simply a very small addition to the circulation space, which has no external significance.

18. Amendments (ii), (iii) and (v) all relate to minor revisions to functional elements of the permitted building. In my view, they can be considered on their own merits and, on the material supplied by RSHP, none will give rise to any material offsite impacts. Nonetheless, I can accept that LBC may want to consider these four elements as a formal application for minor additional elements of operational development. There can, however, be no possible justification for requiring a full resubmission of the planning application for the entire development.

### **CONCLUSION**

19. For the reasons given above, I advise that section 96A application be made for amendments (iv) and (vi) and that a planning application for the minor additional elements of operational development be submitted for the remaining matters.

THOMAS HILL QC

2<sup>nd</sup> July, 2012

4-5 GRAY'S INN SQUARE

LONDON WC1R 5AH